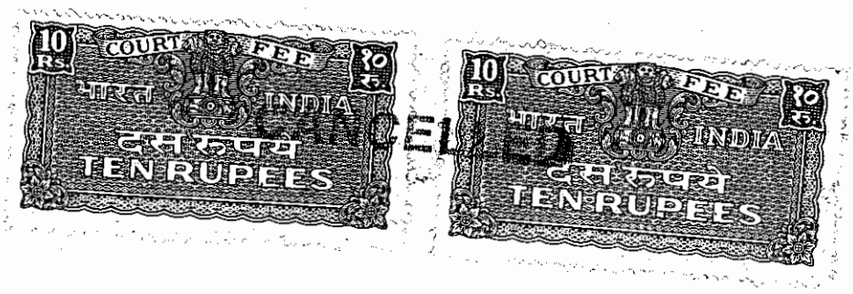

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(13)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH

AT BILASPUR

Single Bench

M.A.NO. 1251 / 2005

APPELLANTS : 1. Smt. Sunita Chhabada,
APPLICANTS Aged about 41 years,
W/o Shri Sunil Kumar Chhabada, R/o Telephone Exchange Road, Near Geeta Lodge, Bilaspur (C.G.)

2. Kunal Chhabada, Aged about 16 years, S/o Sunil Kumar Chhabada, Minor Through Guardian Mother Smt. Sunita Chhabada, R/o Telephone Exchange Road, Near Geeta Lodge, Bilaspur (C.G.)

P.R. No. 2650/05
Presented by Shri N.K. Sharma
dated 07/10/05

3. Kapil Chhabada, Aged about 14, S/o Shri Sunil Kumar Chhabada Minor Through Guardian Mother Smt. Sunita Chhabada, R/o Telephone Exchange Road, Near Geeta Lodge, Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1. Bank of India,
PLAINTIFF Through-Branch Manager
DECREE HOLDER Branch office Dayalband, Bilaspur Tahsil & Distt. Bilaspur (C.G.)

DEFENDANTS 2. Ramesh Kumar Chhabada,
JUDGMENT DEBTORS aged about 47 years,
S/o Shri Omprakash Chhabada, Occupation-Business R/o Behind Geeta Lodge, Bilaspur, Tahsil & Distt. Bilaspur.

AP Dubey
Advocate

3. Omprakash Chhabadda, aged about 69 years Occupation-Business R/o Near Geeta Lodge, Bilaspur, Tahsil & Distt. Bilaspur.

AUCTION PURCHASER

4. Sanjay Agrwal, Aged about 33 years, S/o Late Shri Ramchandra Agrwal, R/o Kranti Nagar Bilaspur. Tahsil and Distt. Bilaspur (C.G.)

APPEAL UNDER SECTION 104 RED WITH ORDER 43 RULE 1 OF THE CODE OF CIVIL PROCEDURE 1908.

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(50)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

M.A.No.1251/05

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

27-1-2006

Mr. V.D.Bajpai, Senior Advocate with Mr. R.K.Tiwari and Mr. A.P.Dubey, counsel for the appellants.
Mr. Rajeev Bharat, counsel for the caveator/respondent No.3, Omprakash Chhabada.
Mr. Sanjay Ku. Agrawal, counsel for respondent No.4, Sanjay Agrawal.
None for respondents No.1 and 2.

Heard on admission and M.(C.)P.No.1506/2005.

During the pendency of the Execution Case No.12-B/2000 (Bank of India, the decree holder vs. M/s Omprakash Ramesh Kumar Chhabada and others, the judgment debtors), the present appellants filed an application under Order 21 Rules 97, 98, 101, 102 and 103 of the Code of Civil Procedure and the same has been dismissed by the Court vide impugned order dated 13-9-2005. Aggrieved by that order, the appellants have filed this appeal under Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure. Order 43 Rule 1 of the Code of Civil Procedure contains a list of orders against which an appeal shall lie under the provision of Section 104 of the Code of Civil Procedure. Admittedly, the impugned order does not find place in that list. From bare reading of Section 104 of the Code of Civil Procedure, it is also evident that, any order passed on the application filed under Order 21 Rules 97, 98, 101, 102 and 103 of the Code of Civil Procedure does not come within the ambit of Section 104 of the Code of Civil Procedure.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.No.1251/05 — 2 — सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Under Order 21 Rule 97 of the Code of Civil Procedure, the person, who obstructs execution, has right for adjudication and the Court has right to determine those questions and pass order accordingly. Those orders are treated as decreed under Order 21 Rule 103 of the Code of Civil Procedure. Therefore, the impugned order is a decree against which an appeal lies under Section 96 of the Code of Civil Procedure and not treating the said decree an order under Section 104 of the Code of Civil Procedure. The appellants placed reliance on **Dattatraya Vishwanath Naik vs. Mangal Jiwanlal and another, reported in 1983 MPLJ 23**. Hon'ble the High Court of Madhya Pradesh has held that any order passed by an Executing Court after 1-2-1977 disposing of an application under Order 21 Rule 97 of the Code of Civil Procedure is appealable under the provisions of the amended Act and the aggrieved party has no right to file any suit. Therefore, as laid by Hon'ble the High Court of Madhya Pradesh also, the impugned order, being a decree is appealable only under the provision of Section 96 read with Order 41 of the Code of Civil Procedure.

In the result, the miscellaneous appeal filed by the appellants under Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure, 1908 is not tenable. However, the appellants, if desire, may file regular appeal in accordance with Section 96 read with Order 41 of the Code of Civil Procedure and

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.No. 1251/05 —3— **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	other various legal provisions of other laws. With the aforesaid observations, the appeal is dismissed. In the light of above order, M.(C.)P.No.1506/2005 for stay and I.A.No.2761/2005 for urgent hearing stand disposed of. **Sd/-** **V.K.Shrivastava** **Judge**	

C.Singh